



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APR 4 2014

Brandie Reiner

Tempe, AZ 85281

RE: MUR 6615

Dear Ms. Reiner:

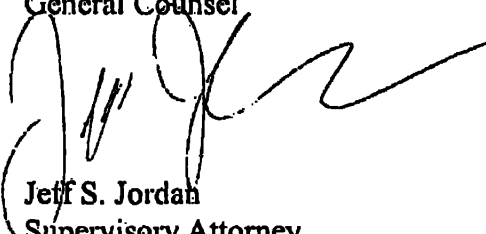
The Federal Election Commission reviewed the allegations in your complaint received on July 25, 2012. On April 1, 2014, based on the information provided in the complaint, the Commission decided to exercise its prosecutorial discretion and dismiss the allegations that SAVE 9 480-459-6842 and associated John Doe(s) violated 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"). Accordingly, the Commission closed the file in this matter on April 1, 2014.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

General Counsel

BY: 
Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Enclosure
Factual & Legal Analysis

14044353597

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: SAVE 9 480-459-6842
John Doe(s)

MUR 6615

I. INTRODUCTION

This matter was generated by a Complaint filed by Brandie Reiner ("Reiner" or "Complainant") alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Respondents SAVE 9 480-459-6842 and associated John Doe(s). After reviewing the record, the Commission dismisses the allegations that Respondents violated 2 U.S.C. § 441d(a).

FACTUAL AND LEGAL ANALYSIS**A. Factual Background**

Complainant states that on or around July 19, 2012, she observed at least 50 campaign signs near Tempe and Phoenix, Arizona that allegedly expressly advocated the defeat of Kyrsten Sinema, a candidate in Arizona's 9th congressional district.¹ Compl. at 1. The signs allegedly bore the message: "Stay at home mom? Kyrsten Sinema says You're a leech!"² *Id.* The signs also included a "bar code"³ that viewers could scan to obtain "proof." *Id.*

According to Complainant, the only "disclaimer" on the signs is the following line:
"Paid for by SAVE 9 480-459-6842." Compl. at 1. She states that she called the telephone

¹ Sinema won the primary election, which was held on August 28, 2012, and subsequently won the general election.

² The Complaint includes copies of what appear to be two of the signs. See Compl., Ex. 1.

³ The bar code appears to be a "Quick Response Code," more commonly known as a "QR Code." QR Codes are two-dimensional bar codes that are used for storing and reading URLs or other information on smart phones. See http://www.oxforddictionaries.com/us/definition/american_english/QR-code; see also <http://www.pcmag.com/encyclopedia/term/61424/qr-code>.

1 number to ascertain who was responsible for the signs and spoke to an individual who refused to
2 identify himself. *Id.*⁴ The individual allegedly acknowledged that he was associated with SAVE
3 9, although he added that “nobody would know anything about it” because “it’s relatively new.”
4 *Id.* Complainant asserts that, based on her conversation with and a text message received from
5 the unidentified individual, SAVE 9 expressly advocates for the defeat of Sinema and the
6 election of Andrei Cherny, one of Sinema’s primary election opponents. *Id.* at 2; *see also*
7 Compl., Ex. 2. Therefore, Complainant concludes that SAVE 9 and the individuals associated
8 with the signs violated the Act and Commission regulations by failing to identify who paid for
9 them and disclose whether they were authorized by another candidate or candidate’s committee.
10 Compl. at 2.

11 **B. Legal Analysis**

12 All public communications made by a political committee must include a disclaimer.
13 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). Whenever any person makes a disbursement for a
14 public communication that expressly advocates the election or defeat of a clearly identified
15 candidate, he or she must include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. §§ 110.11(a)(2),
16 (b). Public communications authorized and paid for by a candidate, an authorized committee of
17 a candidate, or an agent of either, must clearly state that the communications were paid for by the
18 authorized political committee. 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(b)(1). Public
19 communications authorized by a candidate, an authorized committee of a candidate, or an agent
20 of either but paid for by another person, must clearly state that the communications were paid for
21 by such person but authorized by the political committee. 2 U.S.C. § 441d(a)(2); 11 C.F.R.

⁴ The staff ascertained that 480-459-6842 appears to be an unpublished cell phone number, but was unable to obtain additional information.

1 § 110.11(b)(2). On the other hand, public communications not authorized by a candidate,
2 authorized committee, or an agent of either, must clearly state the name and permanent address,
3 telephone number or World Wide Web address of the person who paid for the communications,
4 and state that they were not authorized by any candidate or candidate's committee. 2 U.S.C.
5 § 441d(a)(3); 11 C.F.R. § 110.11(b)(3). Finally, under Commission regulations, a
6 communication expressly advocates the election or defeat of a clearly identified federal
7 candidate if it uses "phrases" such as "vote for the President," "re-elect your Congressman,"
8 "vote against Old Hickory," or "defeat" accompanied by a picture of one or more candidate(s),
9 among other enumerated examples, or "communications of campaign slogan(s) or individual
10 word(s), which in context can have no other reasonable meaning than to urge the election or
11 defeat of one or more clearly identified candidate(s), such as posters, bumper stickers,
12 advertisements, etc., which say "'Nixon's the One,' 'Carter '76,' 'Reagan/Bush' or 'Mondale!'"⁵
13 11 C.F.R. § 100.22(a); *see also Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976).

14 Although the campaign signs appear to be public communications, the signs do not
15 contain express advocacy. In light of the likely *de minimis* cost attributable to approximately 50
16 campaign signs, the Commission exercises its prosecutorial discretion and dismisses the
17 allegations that SAVE 9 480-459-6842 and associated John Doe(s) violated 2 U.S.C. § 441d(a).
18 *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁵ "Expressly advocating" also includes any communication that, when taken as a whole and with limited reference to external events, such as the proximity of the election, could only reasonably be interpreted as advocating the election or defeat of a clearly identified candidate because it contains an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and about which "reasonable minds could not differ as to whether it encourages actions to elect or defeat" a clearly identified candidate or encourages some other kind of action. 11 C.F.R. § 100.22(b).